

CHARGE SHEET**I. PERSONAL DATA**

1. NAME OF ACCUSED (Last, First, MI) COTTER, Brandon G.		2. SSN (b) (6)	3. RANK/RATE LCpl	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 1stBn, 9th MarRegt, 2d MarDiv, Camp Lejeune, NC		Case#: 12-34 DOB: (b) (6) EAS: 15 Jun 12	6. CURRENT SERVICE a. INITIAL DATE 16 Jun 08 b. TERM 4 Yrs	
7. PAY PER MONTH a. BASIC \$1,981.00 b. SEA/FOREIGN DUTY \$0.00 c. TOTAL \$1,981.00		8. NATURE OF RESTRAINT OF ACCUSED IHCA Pretrial Confinement		9. DATE S) IMPOSED 8 Jan 12 – 19 Jan 12 19 Jan 12 - Present

II. CHARGES AND SPECIFICATIONS**10. CHARGE I: Violation of the UCMJ, Article 117**

SPECIFICATION: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did, at or near Jacksonville, North Carolina, on or about 7 January 2012, did wrongfully use provoking reproachful words to wit: "the south sucks and they were pieces of trash" and "You are a pussy" while making gestures with his middle finger and tongue to Billie J. SENN.


~~CHARGE II:~~ CHARGE I **Violation of the UCMJ, Article 119**
JTL 30 MAR 12

SPECIFICATION: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did, at or near Jacksonville, North Carolina, on or about 7 January 2012, by culpable negligence commit an offense directly affecting the person of Staff Sergeant Jimmie L. SENN, U.S. Marine Corps, to wit: a battery, unlawfully kill Staff Sergeant Jimmie L. SENN by striking him in the head with his fist.

~~CHARGE III:~~ CHARGE II **Violation of the UCMJ, Article 124**
JTL 30 MAR 12

SPECIFICATION: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did, at or near Jacksonville, North Carolina, on or about 7 January 2012, maim Staff Sergeant Jimmie L. SENN, U.S. Marine Corps by fracturing his skull and by disabling an organ of the body to wit: the brain.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) MORALES, Marlene, R.	b. GRADE LCpl	c. ORGANIZATION OF ACCUSER CLR-27, MLG, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER 		e. DATE JAN 20 2012

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20th day of JAN, 2012, and signed the foregoing charges and specifications under oath that she is a person subject to the Uniform Code of Military Justice and that she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of her knowledge and belief.

M. D. ZIMMERMAN

Typed Name of Officer

Major, U.S. Marine Corps

Grade and Service


SignatureCLR-27, MLG, Camp Lejeune, NC

Organization of Officer

Judge AdvocateOfficial Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

12. On 20 January, 2012, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

C. J. EAST

Typed Name of Immediate Commander

1stBn, 9th MarRegt, 2d MarDiv, Camp Lejeune, NC

Organization of Immediate Commander

First Lieutenant, U.S. Marine Corps

Grade



Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1700 hours, 20 January 2012 at 1stBn, 9th MarRegt, 2d MarDiv
Camp Lejeune, NC Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE¹ COMMANDING OFFICER

C. J. EAST

Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

First Lieutenant, U.S. Marine Corps

Grade



Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

2d Marine Division

Camp Lejeune, NC

MAR 30 2012

Referred for trial to the General court-martial convened by courts-martial convening order # 1-10

dated 13 September 2010, subject to the following instructions:² None.

By XXXXXXXXXXXXXXXXXX of _____
Command or Order

W. LEE MILLER, JR.

Typed Name of Officer

Commanding General

Official Capacity of Officer Signing

Major General, U.S. Marine Corps

Grade



Signature

15. On 11 April, 2012, I (caused to be) served a copy hereof on (each of) the above named accused.

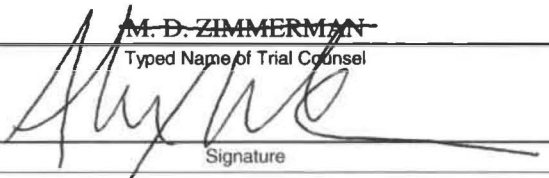
~~M. D. ZIMMERMAN~~

Typed Name of Trial Counsel

Captain

Major, U.S. Marine Corps

Grade or Rank of Trial Counsel



Signature

FOOTNOTES

- 1 -- When an appropriate commander signs personally, inapplicable words are stricken.
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

~~CHARGE IV~~ **CHARGE III** Violation of the UCMJ, Article 128
JTL 30 MAR 12

SPECIFICATION 1: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did, at or near Jacksonville, North Carolina, on or about 7 January 2012, unlawfully strike Staff Sergeant Jimmie L. SENN, U.S. Marine Corps, in the face with his fist.

SPECIFICATION 2: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did at or near Jacksonville, North Carolina on or about 7 January 2012, unlawfully strike Billie J. SENN, in the face with his fist.

CHARGE SHEET

I. PERSONAL DATA


1. NAME OF ACCUSED (Last, First, MI) COTTER, Brandon G.		2. SSN (b) (6)	3. RANK/RATE LCpl	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 1stBn, 9th MarRegt, 2d MarDiv, Camp Lejeune, NC		6. CURRENT SERVICE		
		Case#: 12-34.1 DOB: (b) (6) EAS: 15 Jun 12	a. INITIAL DATE 16 Jun 08	b. TERM 4 Yrs
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$1,981.00	\$0.00	\$1,981.00		
		IHCA Pretrial Confinement		
		9. DATE S) IMPOSED 8 Jan 12 – 19 Jan 12 19 Jan 12 - Present		

II. CHARGES AND SPECIFICATIONS

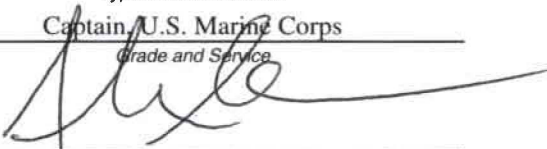
10. **ADDITIONAL CHARGE:** Violation of the UCMJ, Article 134

SPECIFICATION: In that Lance Corporal Brandon G. COTTER, U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division, Camp Lejeune, North Carolina, did, at or near Jacksonville, North Carolina, on or about 7 January 2012, unlawfully kill Staff Sergeant Jimmie L. SENN, U.S. Marine Corps, by negligently punching the said Staff Sergeant SENN in the face with his fist while the said Staff Sergeant SENN without provocation standing in a paved parking lot, which conduct was prejudicial to good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) MORALES, Marlene, R.	b. GRADE LCpl	c. ORGANIZATION OF ACCUSER CLR-27, MLG, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER 	e. DATE MAR 28 2012 27 MAR 12	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 27th day of March 2012, and signed the foregoing charges and specifications under oath that she is a person subject to the Uniform Code of Military Justice and that she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of her knowledge and belief.

A. R. WILSCHKE
Typed Name of Officer
Captain, U.S. Marine Corps
Grade and Service

Signature

CLR-27, MLG, Camp Lejeune, NC
Organization of Officer
Judge Advocate
Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

ORIGINAL

12. On 27 March, 2012, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

C. J. EAST

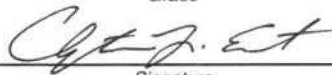
Typed Name of Immediate Commander

1stBn, 9th MarRegt, 2d MarDiv, Camp Lejeune, NC

Organization of Immediate Commander

First Lieutenant, U.S. Marine Corps

Grade



Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1737 hours, 27 March 2012 at 1stBn, 9th MarRegt, 2d MarDiv
Camp Lejeune, NC Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE¹ COMMANDING OFFICER.

C. J. EAST

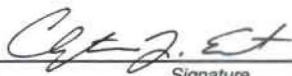
Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

First Lieutenant, U.S. Marine Corps

Grade



Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

2d Marine Division

Camp Lejeune, NC

MAR 30 2012

Referred for trial to the General court-martial convened by courts-martial convening order # 1-10

dated 13 September 2010, subject to the following instructions:² To be tried in conjunction with
charges preferred on 20 January 2012

By XXXXXXXXXXXXXXXXXX of _____
Command or Order

W. LEE MILLER, JR.

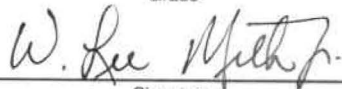
Typed Name of Officer

Commanding General

Official Capacity of Officer Signing

Major General, U.S. Marine Corps

Grade



Signature

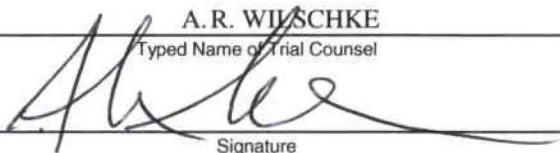
15. On 11 APRIL, 2012, I (caused to be) served a copy hereof on (each of) the above named accused.

A. R. WILSCHKE

Typed Name of Trial Counsel

Captain, U.S. Marine Corps

Grade or Rank of Trial Counsel



Signature

FOOTNOTES

1 -- When an appropriate commander signs personally, inapplicable words are stricken.
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

**DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT**

UNITED STATES)	GENERAL COURT MARTIAL
)	
v.)	
)	STIPULATION OF FACT
BRANDON G. COTTER)	
(b) (6))	
LANCE CORPORAL/E-3)	
U. S. MARINE CORPS)	

1. I am Brandon G. Cotter, I entered into service on 16 June 2008, and have been on continuous active duty since that date. I have not been released or discharged from active duty service at any time. I have never been issued a valid DD 214 or a final accounting of my pay. My present military organization is 1st Battalion, 9th Marine Regiment, 2d Marine Division, II MEF, Camp Lejeune, North Carolina.

2. I am entering this Stipulation of Fact of my own free will. No one has forced or threatened me to enter this Stipulation of Fact. I understand that I have the right NOT to enter this Stipulation of Fact and that this Stipulation of Fact will not be accepted without my consent. I understand that if this Stipulation of Fact is entered into evidence, the facts contained in it cannot be contradicted by either the Government or myself. I have read and discussed this Stipulation of Fact with my counsel. Everything contained within this Stipulation of Fact is true. I understand that if admitted into evidence this Stipulation of Fact will be used in the following three ways:

- a) To determine if I am guilty of the offenses to which I have pled guilty;
- b) To determine an appropriate sentence; and
- c) To be considered by appellate courts and reviewing authorities in reviewing my case.

3. I agree to these three uses and consent to this Stipulation of Fact being admitted by the Military Judge.

4. My name, Brandon G. Cotter, rank, Lance Corporal, and unit, 1st Battalion, 9th Marine Regiment, 2dMarDiv, are correctly stated in each specification.

5. The following facts are provided to establish the factual predicate that I am guilty of the offenses charged.

Facts Related to Charge IV, Specification 2:

1. On 7 January 2012, at Duck's Bar and Grill, located in Jacksonville, North Carolina, I did bodily harm to Mrs. Billie J. Senn by unlawfully punching her in the face with my fist.
2. My actions in striking Mrs. Senn were intentional.
3. I had just punched Staff Sergeant J. L. Senn, U.S. Marine Corps, who I knew to be her husband.
4. After I punched him she attempted to confront me about the fight with her husband.
5. I punched her in the mouth.
6. I did not have Mrs. Senn's consent to strike her.
7. I did not have any lawful authority to strike Mrs. Senn in the face.
8. At no time do I believe that I had any legal justification to strike Mrs. Senn in with my fist.
9. I was not responding to any provocation or acting in self defense when I struck Mrs. Senn.
10. I believe and admit that I did act with unlawful force or violence because I struck Mrs. Senn in the face with my fist.
11. No one forced or coerced me into committing this assault.
12. I could have avoided committing this assault by walking away from the situation or refraining from striking Mrs. Senn.

Facts Related to Additional Charge 1, and the sole Specification:

13. At Duck's Bar and Grill, located in Jacksonville, North Carolina, on 7 January 2012, I unlawfully killed Staff Sergeant J. L. Senn, by punching the said Staff Sergeant Senn in the face with my fist.
14. I punched Staff Sergeant Senn in the face with my fist on 7 January 2012 in the parking lot of Duck's Bar and Grill at approximately 2:15 a.m.
15. My conduct was wrongful because I punched Staff Sergeant Senn in the face.
16. I hit Staff Sergeant Senn in the face when I knew he had been drinking alcohol.
17. I hit him we were standing in a paved parking lot.
18. I hit SSgt Senn before he knew there was going to be a fight, SSgt Senn had not braced for the punch and was not aware that I would punch him. I know that punching someone who does not know they are about to be punched increases the likelihood that they are knocked

unconscious or are knocked off of their feet and are not ready to brace or protect themselves for the fall.

19. I know that given his intoxication and the location of the incident it was likely that my punch to Staff Sergeant Senn's face could cause him to fall onto the pavement and result in serious injuries because of his inability to brace or protect himself in the fall.

20. I struck Staff Sergeant Senn in the face, knocking him unconscious and to the ground because his wife and I were in an argument earlier in the evening.

21. Under the circumstances my conduct was service discrediting conduct. My actions in striking a man in a bar late at night did not demonstrate the type of behavior a Lance Corporal in the U.S. Marine Corps should participate in. My actions reflected poorly upon the Marine Corps because I killed another Marine in Jacksonville North Carolina. I believe that this type of incident lowers the esteem of the Marine Corps in the eyes of the public.

22. Staff Sergeant J. L. Senn was pronounced dead on 14 January 2012.

23. Staff Sergeant Senn's death resulted from my action in striking him in the face with my fist.

24. I am aware that Staff Sergeant Senn was pronounced dead on 14 January 2012 because I have reviewed the autopsy report and have reviewed the medical reports.

25. I had no legal justification or authorization for killing Staff Sergeant Senn.

26. I was not acting in self defense or in defense of another.

27. No one forced or coerced me into striking Staff Sergeant Senn.

28. I could have avoided striking Staff Sergeant Senn in the face with my fist by just walking away or refraining from striking him.

29. By striking Staff Sergeant Senn in the face I did demonstrate a lack of care for the safety of others.


30. I was under a duty to use due care and not punched someone who was under the influence of alcohol in the face on a hardball surface.

31. A reasonably careful person under similar circumstances would have used greater care under the same or similar circumstances and would have refrained from striking Staff Sergeant Senn. I believe this because as Marines and as a person I know that I am not supposed to put my hands on anyone especially someone who appears to be under the influence of alcohol.

32. I could have used a greater degree of care by not reacting the way I did and not striking Staff Sergeant Senn in the face.


This stipulation of fact is made in accordance with MRE 410 and protected thereunder.

I understand that I am not required to enter into a stipulation of fact. If I elect to enter into this stipulation of fact the evidence presented may be used at trial to establish any element of the crimes of which I am charged, or to determine an appropriate sentence.




A. R. Wilschke
Capt, USMC
Trial Counsel

Date: 27 MAR 12




Tracey L. Holtshirley
Major, USMC
Detailed Defense Counsel

Date: 27 MAR 2012



Brandon G. Cotter
Lance Corporal, USMC
Accused

Date: 06 JUNE 2012



Eric M. Kopka
Civilian Defense Counsel

Date: 06 June 2012

REPORT OF RESULTS OF TRIAL

Case No. 12-34

FROM: Captain A. R. Wilschke, U.S. Marine Corps
TO: Convening Authority

Subj: REPORT OF RESULTS OF TRIAL

1. Pursuant to R.C.M 1101(a)(2)(f)(v), MCM (2008 Ed.), notification is hereby given in the case of U.S. v. **Lance Corporal Brandon G. Cotter, (b) (6) U.S. Marine Corps, 1st Battalion, 9th Marine Regiment, 2d Marine Division**, a trial by **General Court-Martial** occurring at Camp Lejeune, North Carolina, convened by **Commanding General, 2d Marine Division**.

2. Offenses, pleas, and findings:

a. Charges & Specifications

(with description of offense(s), including whether convicted of lesser included offenses)

		Plea(s)	Finding(s)
Chg III:	Viol Art 128, UCMJ	G	G
Spec 2:	Did at or near Jacksonville, North Carolina on or about 7 January 2012, unlawfully strike Billie J. Senn, in the face with his fist.	G	G
Add Chg:	Viol Art 134, UCMJ	G	G
Spec:	Did at or near Jacksonville, North Carolina on or about 7 January 2012, unlawfully kill Staff Sergeant Jimmie L. Senn, U.S. Marine Corps by negligently punching the said Staff Sergeant Senn in the face with his fist while the said Staff Sergeant Senn without provocation standing in a paved parking lot, which was prejudicial to good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.	G*	G*

* Guilty except for the words "prejudicial to good order and discipline in the armed forces and" of the excepted words Not Guilty to the specification as excepted, Guilty.

b. Any preferred charge withdrawn before or at trial: NO X YES
(include a brief description)

Subj: REPORT OF RESULTS OF TRIAL

The convening authority withdrew Charge I and the sole Specification, Charge II, and the sole Specification, Specification 1 under Charge III without prejudice.

Chg I: Viol Art 119, UCMJ
Spec: Did at or near Jacksonville,
North Carolina, on or about 7
January 2012, by culpable
negligence commit an offense
directly affecting the person of
Staff Sergeant Jimmie L. Senn,
U.S. Marine Corps.

Chg II: Viol Art 124, UCMJ
Spec: Did at or near Jacksonville,
North Carolina, on or about 7
January 2012, maim Staff
Sergeant Jimmie L. Senn, U.S.
Marine Corps by fracturing his
skull and by disabling an organ
of the body.

Chg III: Viol Art 128, UCMJ
Spec 1: Did at or near Jacksonville,
North Carolina, on or about 7
January 2012, unlawfully strike
Staff Sergeant Jimmie L. Senn,
U.S. Marine Corps.

c. Partial acquittal based on mental incompetence: ☒ NO ☐ YES
(include a brief description of offenses charged)

[Note: If an accused is found incompetent to stand trial or not guilty of all charges and specifications by reason of lack of mental responsibility and a Report of Results of Trial would not otherwise be completed, then the trial counsel must inform the Navy-Marine Corps Appellate Review Activity (Code 40), 716 Sicard Street, SE. Suite 1000, Washington Navy Yard, DC 20374-5047.]

3. Forum: **Military Judge Alone**

Subj: REPORT OF RESULTS OF TRIAL

4. Sentence adjudged (if specific sentence provision does not apply indicate "NA"):

Discharge (Dismissal, DD, BCD)	BCD
Confinement	2 YEARS
Hard Labor w/out confinement	NA
Reduction	E-1
Forfeiture	NA
Reprimand	NA
Other	NA

5. Date sentence adjudged: **6 June 2012**. Adjudged forfeitures, adjudged reduction in grade, and automatic forfeitures, if any, become effective on **20 June 2012** (14 days after date sentence was announced) unless indicated otherwise in paragraph 8, below, or unless written notice of deferment by the convening authority is received by authorities with responsibility for the accused's service and pay records. Absent pertinent direction to the contrary in paragraph 8, below, or such written notice of deferment, action by those authorities in this case giving effect to the adjudged and automatic sentence, when applicable, must occur by the second date in this paragraph. Trial counsel must be provided the originals of such written approved deferments for inclusion in the record of trial (R.C.M. 1103, MCM).

6. Automatic forfeitures apply: Yes X No See paragraph 8, below, for the specific sentence to be given effect in this case, consistent with paragraph 5 above.

a. GCM **Yes** (forfeiture of all pay and allowances while confined)

b. SPCM **N/A** (forfeiture 2/3 pay while confined)

*Note: See maximum sentence limitation of the pretrial agreement.

Subj: REPORT OF RESULTS OF TRIAL

7. Credits to be applied to confinement, if any:

a. Pretrial Confinement: 151 days (see note below)

b. Judicially-ordered credits: 0 days

Total credits: 151 days

8. Terms of pretrial agreement concerning sentence, if any: (YES/NO response only):

MJ alone: YES	Confinement limitation: YES
Non-capital referral: NO	Forfeiture limitation: NO
Restitution: NO	Reduction in grade limitation: NO
Referral to lower forum: NO	Allotment to family: NO
Cooperation: NO	Allotment to victim: NO
Deferment of confinement: NO	Other: (Brief description) NO

9. Upon convening authority's action in this case, sex offender notifications may be required per 42 U.S.C. § 14071: X No ___ Yes

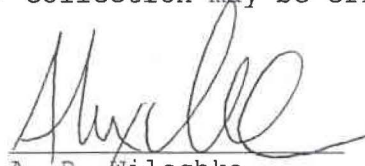
See DODINST 1325.7, 'Administration of Military Correctional Facilities and Clemency and Parole Authority,' July 17, 2002, Enclosure 27 for a list of offenses requiring sex offender notifications.

10. DNA Processing Required Under Title 10 U.S.C. §1565: ___ No X Yes

*Qualifying Military Offenses (QMO) for DNA processing are any offense under the UCMJ punishable by a sentence of confinement for more than one year (regardless of the sentence imposed). This includes Attempt (Article 80), Conspiracy (Article 81) or solicitation of Another to Commit a QMO (Article 134). See Undersecretary of Defense for Personnel and

Subj: REPORT OF RESULTS OF TRIAL

readiness Memo of 18 Apr 05 for further guidance on Qualifying Military Offenses. If collection is required, collection may be effected before the convening authority acts.



A. R. Wilschke
Captain
U.S. Marine Corps

Distribution:

Major T. L. Holtshirley
Colonel G. W. Riggs
Convening Authority
Commanding Officer of accused
CO/OIC of brig (if confinement adjudged)
PDS/Unit Diary Clerk
Disbursing Office
Record of Trial
Officer exercising general courts-martial jurisdiction
Review

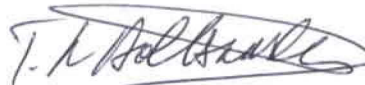
4 hrs 30 min (Total for all courts)

[Note: Each day of pretrial confinement shall be counted as a day of pretrial confinement, except that, if the sentence includes confinement, the day on which sentence is announced shall not be counted as a day of pretrial confinement. Notwithstanding the foregoing, authorities responsible for sentence computation will count the day of sentencing as a day of pretrial confinement, when the accused was in pretrial confinement on the day that a sentence including confinement was announced and, for any reason (e.g., immediate deferment), that day does not count towards service of the sentence to confinement.]

Acknowledgement of Service

From: Major T. L. Holtshirley, U.S. Marine Corps, Detailed
Defense Counsel
To: Staff Judge Advocate
Subj: STAFF JUDGE ADVOCATE'S RECOMMENDATION ICO UNITED
STATES V. Lance Corporal Brandon G. Cotter XXX XX
(b) (6) USMC

1. I acknowledge that I received the Staff Judge Advocate's recommendation in the subject case on 16 Aug 2012 and, unless I request and am granted additional time, that I have ten days to submit post-trial matters in accordance with R.C.M. 1105 and 1106, MCM (2008 Edition). If, after ten days, I have not submitted such matters that right will be deemed waived and the case will be forwarded to the Convening Authority for action.



T. L. HOLTSHIRLEY

DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT

U N I T E D S T A T E S

v.

BRANDON G. COTTER

XXX XX(b) (6)

LANCE CORPORAL/E-3, USMC

MEMORANDUM
OF
PRETRIAL AGREEMENT

(Part I)

I, Lance Corporal Brandon G. Cotter, the accused in a general court-martial, in exchange for good consideration and after thorough consultation with my defense counsel, do fully understand and agree to the following terms and conditions:

1. I agree to enter pleas of GUILTY as indicated below. I do so fully understanding that the Convening Authority may approve any sentence adjudged by the court-martial, but shall order executed only that sentence which does not exceed the lesser of the sentence contained in Part II of this agreement (the Maximum Sentence Limitation Appendix) or the sentence adjudged by this court-martial.
2. This agreement (Parts I and II) constitutes all the conditions and understandings of both the government and myself regarding the pleas in this case. There are no other agreements, written or otherwise.
3. I understand, and the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and/or restraint, (3) forfeiture and/or fine, (4) reduction in pay grade, and (5) any other lawful punishment.
4. I am satisfied with my defense counsel, Mr. Eric M. Kopka and detailed military counsel Major T. L. Holtshirley, U.S. Marine Corps, in all respects and consider them qualified to represent me at this court-martial.

5. I am entering into this agreement freely and voluntarily. Nobody has made any attempt to force or coerce me into making this agreement or into pleading guilty.

6. I have been fully advised by my defense counsel of, and I fully understand and comprehend the meaning and effect of, my guilty pleas and all attendant effects and consequences, including the possibility that I may be processed for administrative discharge from the United States Marine Corps. I understand that such an administrative discharge could result in an other than honorable characterization of service, unless otherwise limited by this agreement, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason.

7. I understand that I may ask permission to withdraw any of my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw any of my pleas of guilty after they have been accepted, but before sentence is announced, and the military judge may, at his/her discretion, permit me to do so.

8. I understand that this pretrial agreement may become null and void, and the convening authority can withdraw from this agreement, in the event that any of the following occur:

(1) I fail to plead guilty as required by this agreement;

(2) The court refuses to accept any of my pleas of guilty;

(3) The court sets aside any of my pleas of guilty for whatever reason, including upon my request, before sentence is announced;

(4) I fail to satisfy any material term of this agreement; or

(5) I fail to plead guilty as required by this agreement at a rehearing should one occur.

9. I understand that if this agreement becomes null and void, then my offer to plead guilty and enter into this agreement cannot be used against me in any way in determining whether I am guilty or not guilty of the charges alleged against me at this court-martial or in determining an appropriate sentence.

10. I understand that if the approved sentence includes a punitive discharge or confinement in excess of 90 days (or 3 months), whether the sentence is suspended or not, Article 58a of the U.C.M.J. and § 0152 of the JAGMAN require that I suffer automatic administrative reduction in pay grade to the lowest enlisted paygrade, E-1, unless the Convening Authority takes action to remit or suspend the automatic reduction.

11. I understand that if the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, whether the sentence is suspended or not, Article 58b of the U.C.M.J. requires the automatic imposition of total forfeitures due during any period of confinement served, unless the Convening Authority takes action to waive or defer the automatic forfeiture provision. Forfeitures, whether adjudged or automatic, take effect upon the convening authority's action in this case or 14 days after sentence is adjudged, whichever is earlier. I understand that I may request in writing that the convening authority defer execution of forfeitures until the convening authority takes action in this case. I also understand that I may request that automatic forfeitures be waived by the convening authority for a period up to six (6) months from the date of the convening authority's action. Finally, I understand that if I am held in confinement beyond my End of Active Obligated Service (EAOS) date, then I will not receive any pay or allowances by operation of law, regardless of the terms of this agreement.

12. I understand that should I commit any misconduct (i.e., any act or omission in violation of the U.C.M.J. which constitutes a material breach of this agreement) after the signing of this pretrial agreement but before the date of trial, such misconduct may be the basis for the convening authority to unilaterally withdraw from the pretrial agreement, rendering the entire agreement null and void. I further understand that if I commit misconduct after the date of trial, but before the date of the convening authority's action, the convening authority may, after first complying with notice and hearing requirements consistent with Article 72, U.C.M.J. and R.C.M. 1109, withdraw from the sentence limitation provisions of this agreement. Should the Convening Authority withdraw from the sentence limitation provisions of this agreement based on misconduct occurring after the date of trial but before action is taken in my case, I understand that any provisions in the pretrial agreement relating to suspension of any aspect of my sentence would become null and void in all respects, and that the entire sentence

adjudged at my court-martial may be approved and imposed upon me.

13. I also understand that should I commit any misconduct after the date of the convening authority's action, or violate any of the conditions of suspension stated in this agreement during the period in which any part of my sentence is suspended, the Convening Authority may, after complying with the procedures set forth in R.C.M. 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the Convening Authority, and that previously suspended portion of my sentence could be imposed upon me.

14. I understand that I may be placed on appellate leave under the provisions of Article 76a of the U.C.M.J., if the sentence, as approved, includes an unsuspended punitive discharge. I understand that an individual placed into an appellate leave status will normally not receive any pay or allowances. I further understand that receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave I have accumulated and chose to use, and on the sentence awarded by this court-martial. Furthermore, I agree that, should a punitive discharge be adjudged, I will submit, within 5 days from the date of the conclusion of my trial, a written request to be placed on appellate leave.

15. Specially Negotiated Provisions.

As consideration for this agreement, and after having fully discussed the issue with my defense counsel:

a. I agree to request trial and sentencing by military judge alone, and waive my right to a trial by members, including enlisted members.

b. I understand and agree that, in return for my pleas of guilty, and following the military judge's acceptance of my pleas as set forth below, the convening authority will withdraw the charges and specifications to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn charges and specifications will be dismissed by the convening authority without prejudice.

c. I agree to waive any administrative discharge board that is based on any act or omission reflected in the charges and specifications that are the subject of this Agreement. I understand that any administrative discharge will be characterized in accordance with service regulations, and may be

under other than honorable conditions. I fully understand the nature and purpose of an Administrative Discharge Board, and the rights that I would have at such a Board.

d. I agree to enter into a stipulation of fact, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty. I understand that the failure of the parties to reach a mutually agreed upon stipulation of fact may result in either side withdrawing from this agreement. I further agree not to object to the mutually agreed upon stipulation's admission during the providence inquiry/on the merits and/or during the pre-sentencing proceeding.

e. I agree not to request the presence of any witness at government expense. This provision does not interfere with my ability to present an effective defense case in extenuation and mitigation. I intend to use alternative means to present this material. The government and I specifically agree not to object to telephonic testimony.

f. I and the Government agree not to object to relevant sentencing evidence being offered into evidence in sentencing on the basis of hearsay, authenticity, or lack of foundation.

g. I agree to waive my right to an Article 32, UCMJ, Pretrial Investigation upon acceptance of this pretrial agreement by the Convening Authority. I fully understand the nature and purpose of an Article 32, UCMJ, Pretrial Investigation, and the rights that I would have at such a hearing. I understand that upon acceptance of this agreement, the charges and specifications may be referred to trial by general court-martial without an Article 32, UCMJ, investigation or hearing. I agree that if this agreement becomes null and void for any reason caused by me, my right to Article 32, UCMJ, Pretrial Investigation is still waived because this pretrial agreement was accepted by the Convening Authority.

PLEAS OF THE ACCUSED

CHARGES

PLEAS

~~Charge I: Violation of Article 117 NOT GUILTY~~

~~Spec: Provoking Speech/Gestures NOT GUILTY~~

JTL 30 MAR 12	Charge II: Charge I	Violation of Article 119	NOT GUILTY
	Spec:	Involuntary Manslaughter	NOT GUILTY
JTL 30 MAR 12	Charge III: Charge II	Violation of Article 124	NOT GUILTY
	Spec:	Maiming	NOT GUILTY
JTL 30 MAR 12	Charge IV: Charge III	Violation of Article 128	GUILTY
	Spec:	Assault	NOT GUILTY
	Spec:	Assault	GUILTY
	Add. Charge:	Violation of Article 134	GUILTY
	Spec:	Negligent Homicide	GUILTY except for the words "prejudicial to good order and discipline in the armed forces and" of the excepted words NOT GUILTY to the specification as excepted, GUILTY.

By my signature below I acknowledge that I have read this agreement completely, discussed it with my counsel, understand it in all respects, and am prepared to abide by its terms.

23 MAR 2012

Date



Lance Corporal Brandon Cotter, USMC, Accused

23 MAR 2012

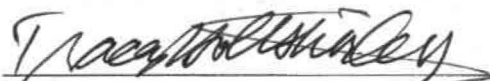
Date



Eric M. Kopka, Civilian Defense Counsel

26 Mar 2012

Date



Major T. Holtshirley, USMC, Defense Counsel

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

30 Mar 2012

Date



Convening Authority

GENERAL COURT-MARTIAL
UNITED STATES MARINE CORPS
EASTERN JUDICIAL CIRCUIT

U N I T E D S T A T E S

v.

BRANDON G. COTTER
XXX XX (b) (6)
LANCE CORPORAL/E-3, USMC

MEMORANDUM
OF
PRETRIAL AGREEMENT:
(Part II)
SENTENCE LIMITATIONS

1. **Punitive Discharge:** May be approved as adjudged.
2. **Confinement:** May be approved as adjudged. However, all confinement in excess of twelve (12) months will be suspended for the period of confinement served plus twelve (12) months thereafter, at which time unless sooner vacated, the suspended portion will be remitted without further action. This Agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this Agreement and deferment for the days of "good time" (as defined by SECNAVINST 1640.9B) that I might earn while in confinement prior to the convening authority taking action on the sentence. The period of deferment will run from the date of sentencing until the date the Convening Authority acts on the sentence.
3. **Forfeitures or Fines:** May be approved as adjudged.
4. **Reduction:** May be approved as adjudged.
5. **Other lawful punishments:** May be approved as adjudged.

23 MAR 2012

Date

Bh G

Lance Corporal Brandon G. Cotter, USMC, Accused

23 MAR 2012

Date

E M Kopka

Eric M. Kopka, Civilian Defense Counsel

26 MAR 2012

Date

T Holtshirley

Major T. Holtshirley, USMC, Detailed Defense Counsel

The foregoing pretrial agreement is **APPROVED** including the sentence limitation portion of this agreement.

30 Mar 2012

Date

W. Su Meltz

Convening Authority

DNA Processing Required by 10 U.S.C. § 1565.

UNITED STATES MARINE CORPS

2D MARINE DIVISION
PSC BOX 20003
CAMP LEJEUNE, NC 28542-0003

General Court-Martial Order No. D12-40

Lance Corporal Brandon G. Cotter XXX XX (b) (6) U.S. Marine Corps, was arraigned and tried at Camp Lejeune, North Carolina, at a General Court-Martial, convened by Commanding General, 2d Marine Division on 6 June for the following offenses:

CHARGES

Charge I: Article 119. Plea: Not Guilty Finding: Dismissed without prejudice. (R. 41)

Specification: Did, at or near Jacksonville, North Carolina, on or about 7 January 2012, by culpable negligence, commit an offense directly affecting the person of Staff Sergeant Jimmie L. Senn, U.S. Marine Corps, to wit: a battery, unlawfully kill Staff Sergeant Jimmie L. Senn by striking him in the head with his fist. Plea: Not Guilty. Finding: Dismissed without prejudice. (R. 41)

Charge II: Article 124. Plea: Not Guilty. Finding: Dismissed without prejudice. (R. 41)

Specification: Did, at or near Jacksonville, North Carolina, on or about 7 January 2012, maim Staff Sergeant Jimmie L. Senn, U.S. Marine Corps, by fracturing his skull and by disabling an organ of the body, to wit: the brain. Plea: Not Guilty. Finding: Dismissed without prejudice. (R. 41)

Charge III: Article 128. Plea: Not Guilty. Finding: Guilty.

Specification 1: Did, at or near Jacksonville, North Carolina, on or about 7 January 2012, unlawfully strike Staff Sergeant Jimmie L. Senn, U.S. Marine Corps, in the face with his fist. Plea: Not Guilty. Finding: Dismissed without prejudice. (R. 41)

Specification 2: Did, at or near Jacksonville, North Carolina, on or about 7 January 2012, unlawfully strike Billie J. Senn, in the face with his fist. Plea: Guilty. Finding: Guilty.

Additional Charge: Article 134. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Jacksonville, North Carolina, on or about 7 January 2012, unlawfully kill Staff Sergeant Jimmie L. Senn, U.S. Marine Corps, by negligently punching the said Staff Sergeant Senn in the face with his fist while the said Staff Sergeant Senn, without provocation, was standing in a paved parking lot, which conduct was prejudicial to good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. Plea: Guilty, except for the words "prejudicial to good order and discipline in the armed forces." Of the excepted words, Not Guilty. To the Specification as excepted, Guilty. Finding: Guilty, as excepted.

SENTENCE

Sentence adjudged on 6 June 2012: Bad-Conduct Discharge, confinement for a period of two (2) years, and reduction to the pay grade of E-1.

APPROVAL

In the General Court-Martial case of United States v. Lance Corporal Brandon G. Cotter XXX XX (b) (6) U.S. Marine Corps, the sentence as adjudged is approved.

ACTION

Confinement. Pursuant to the pretrial agreement, all confinement in excess of twelve (12) months is suspended.

a. The suspension period shall begin from the date of release from confinement and continue for a period of twelve (12) months thereafter.

b. At that time, unless vacated, the suspended part of the confinement sentence will be automatically remitted.

EXECUTION

Subject to the limitations contained in the Uniform Code of Military Justice, the Manual for Courts-Martial, applicable regulations, and this action, the sentence is ordered executed.

CONFINEMENT CREDIT

The accused will be credited with having served one hundred fifty-one (151) days of confinement.

CONDITIONS OF SUSPENSION

The conditions of suspension are contained within the pretrial agreement. Unless otherwise stated therein, pursuant to R.C.M. 1108, Manual for Courts-Martial, this action suspending part of the sentence includes the condition that the accused not violate any punitive article of the Uniform Code of Military Justice during the suspension period.

PLACE OF CONFINEMENT

The Marine Corps Base Brig, Camp Lejeune, North Carolina is designated as the initial place of confinement.

DEFERMENT

There have been no requests to defer any part of the sentence, either as adjudged or as mandated under the UCMJ.

COMPANION CASES

There are no companion cases to this case.

POST-TRIAL DELAY

This action was taken within 120 days of the completion of trial.

MATTERS CONSIDERED

Prior to taking action in the case, I considered the results of trial, the record of trial, the recommendation of the staff judge advocate and the matters submitted by detailed defense counsel on 27 August 2012 in accordance with R.C.M. 1105 and 1106.

DNA

As required by federal law by 10 U.S.C. § 1565, the collection of a DNA sample from Lance Corporal Brandon G. Cotter XXX XX (b) (6) U.S. Marine Corps, is ordered prior to release on appellate leave or separation from the Naval Service.

DISPOSITION

Pursuant to Article 65(a), Uniform Code of Military Justice, the record of trial is forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374 for appellate review.

J. W. LUKEMAN
Brigadier General
U.S. Marine Corps
Commanding


Date

SEP 10 2012

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Accused's SRB - 1
CO, 1/9 - 1
Brig, CLNC - 1
CG, 2d MarDiv - 1

MJ (Col Riggs) - 1
DC (Maj Holtshirley) - 1
Pres, NC&PB - 1
CMC (MMSB) - 1
Accused - 1
Files - 1
DFAO - 1
SJA, 2d MarDiv - 1